

A special meeting of the Board of Aldermen was held Thursday, September 27, 2012, at 7:30 p.m. in the Aldermanic Chamber.

President Brian S. McCarthy presided; City Clerk Paul R. Bergeron recorded.

Prayer was offered by City Clerk Paul R. Bergeron; Alderman Craffey led in the Pledge to the Flag.

President McCarthy

Before I ask the Clerk to take the roll, Alderman Dowd and Alderman Sheehan are participating by telephone and under the terms of the state law that allows them to do that, they need to explain why they can't attend, if they can hear us, and who they are with, if anyone.

Alderman Dowd and Alderman Sheehan stated the reason they could not attend, confirmed that they could hear the proceedings and stated who was present with them.

President McCarthy

Acknowledged that those present could hear Alderman Dowd and Alderman Sheehan as well.

The roll call was taken with 13 members of the Board of Aldermen present; Alderman Dowd and Alderman Sheehan were not in attendance but participated in the meeting via telecommunication.

Her Honor Mayor Donnalee Lozeau and Deputy Corporation Counsel Stephen M. Bennett were also in attendance.

REMARKS BY THE MAYOR

Thank you, Mr. President. Briefly, I would just point out that we are here this evening because the Purchase & Sale with a third extension expires on September 30th. I would hope that the Board can take final action tonight, one way or the other. I would appreciate that happening. I have told you on multiple occasions, we've had more than a dozen meetings relating to this topic, that I think that this is a good business investment for the city. We have almost a 300 acre landfill, we have three parcels of land that directly abut the landfill and are at the entrance point. We have an opportunity here to make some changes as you enter the landfill, we have opportunity for buffers. I think there is some confusion about where the buffers are, it's not just for Trestle Brook, it's also for the people that face the property on the other side of West Hollis Street. It's also for the people that are down to the right as you look at the property. So, there's an opportunity here to look at it here for different purposes. I have on more than one occasion envisioned with everybody else about what possibly could happen, what had been talked about in the past and what the future could hold. The funds for this project are primarily being paid out of funds that were slated to be put into our capital that had been returned to us and \$150,000 from our contingency. This is something that has received the support of the Board of Public Works, it has received the support of the Planning Board, it has received the support of the Capital Improvement Committee, and I think it is because they can see what the benefit is. I have no objection to an amendment that was discussed not too long ago, I believe Tuesday evening, about the residential nature of the property and, as I said, there is a lot of opportunity there and one of my number one priorities is the ability to not, is the ability to prevent, pardon me, commercial development along West Hollis Street, where we can. And, this is one of those instances.

I thank you for your attention tonight and look forward to resolving this issue this evening.

RESPONSE TO REMARKS OF THE MAYOR – None

COMMUNICATIONS

There being no objection, President McCarthy declared that all communications be read by title only.

From: Mayor Donnalee Lozeau
Re: Special Board of Aldermen Meeting

There being no objection, President McCarthy accepted the communication and placed it on file.

PERIOD FOR PUBLIC COMMENT RELATIVE TO ITEMS EXPECTED TO BE ACTED UPON THIS EVENING

Stacie Laughton, 243 Main Street, Apartment 33, Nashua.

I can appreciate everybody's opinions whether they are for or against this. I'm still not in favor of it but I can agree with the stipulation that was added on Tuesday night because I feel as though that is a measure to restrain any further spending. Whether or not there are plans to build an expended facility or there isn't, some people say the evidence is clear that there isn't going to be an expended facility. Some people say there is. I don't know. I really don't care about that. What I do care about is that, if the City wanted to build, I think the number was like \$15 million for a facility, that I can definitely not support. When it comes to certain levels of spending, depending on what they are they're appropriate. This year, I have not supported since day one. But as a way to possibly restrain anymore spending, I can definitely support this stipulation that was added as an amendment on Tuesday. With that, just keep in mind that I don't feel as though in the end, the \$650,000 is going to be the final price tag. That's the price tag you're going to pay to at least purchase the property. What about any sort of clean up? You're going to need to pay to have buildings taken down for other studies. There could be other things lurking underground, its almost like a Pandora's Box. In the end, even with this stipulation, how much in the end is it really going to cost? It costs \$650,000 to purchase it, but what about the eventual cost to tear down the properties and make sure that it conforms with the environmental standards. So, just in the end, think about what the final price tag will be. I can't support it, but I do like the idea that Aldermen have added a stipulation here. May I also further say, and I probably shouldn't say this, I have never felt disrespected in these chambers and I still don't. I think what happened supposedly the other night was kind of over boarding. I don't think anything was said indirectly to me. Thank you.

Paula Johnson, 15 Westborn Drive, Nashua

I have some issues here with this purchase of this property. As I did my homework today as I used to do when I was a member of the Board, now I remember it's a full-time when you have to do some homework. I went back and I was on the phone twice with DES. We only have the environmental study for 836 West Hollis Street. There is nothing for 844 because nothing was ever done in the Main House. That's the house that has the auto body shop. With that there are solvents. With that there are paints. With that there is other hazardous materials. Nobody has ever had any studies there and I know what went on at the property because my family knows the family there. So, I have to question that because I did speak to DES. All the reports only deal with Rick's Auto Body and nothing else. So, for that matter, we should at least be able to or want to have our own environmental study on that house there. Lets take a look at this, \$650,000 is the assessed value, its not an appraised value, its going to be an assessed value most likely. This is below our city's assessed value of which I went and looked everything up today. If the Fire Department uses the buildings for training we're going to have to do a clean-up. Somebody is going to have to clean that up. If, in fact, there is a clean-up which I spoke to DES and they talked about 836, they will come and pay us if they find any oils or solvents on the property that might have been missed. We can be reimbursed for that after we clean it up. But why would we want to do a clean-up? That costs money to do a clean-up. It's like talking about the Beazer property or talking about the other properties here in the city, the old tannery that they were talking about will buy. Yeah we'll buy it, we'll clean it up the 11th hour. The property owner according to state law can come back and take it. But why we as a city would want to take a chance to clean anything up if we don't know that building has ever been looked at by an environment study. That's money, that's taxpayers dollars and you are responsible to the taxpayers in how you spend our money and being held accountable. So, we might move the entrance to the landfill. That's another cost. Here we go again. So its not \$650,000 just for this piece of property, its \$650,000 plus. There's always a plus. So, what are going to do with all that. Some aldermen talk about that we don't have any long-term vision. I really take offense to that. I do have a

long-term vision. Give me the figures and we can have a long-term vision on this. You're just buying a piece of property with nothing else. Do you buy a house, just the structure of the house and don't put anything in it. You buy a house, there's always quests involved in a house. We're buying land we're going to do something with it. So now you take the structures down, now you're going to make it a buffer. There's still a cost involved. Do anything you want with the land. So lets be forthright and tell us exactly what the bottom line is going to cost. We don't want this to become another Main Street project where we have overruns and we didn't do any bids. We have to be accountable to the citizens. Also, I'm going to bring up a little incident that happened to me on the way out of here, which I think is germane to the whole issue here because it had to do with the first Ward meeting and I never talked to the Alderman on Ward 3. Never said a word to her. I walked out of here the other night with Daly and Mr. Sullivan and I was verbally attacked by the Alderman on Ward 3, and I have witnesses to this. She told me her sons were not happy. They were upset because I was rude to her. Never said a word to her that night at the Ward 5 meeting, never talked to her. Yelling and screaming at me and then she brought my employer into this. She needs to be censured, she needs to be written up.

President McCarthy

Alderman Johnson, please refer to the item that's on the agenda.

Paula Johnson

It is on the agenda, because this is what the whole thing was about.

President McCarthy

If you want to address further comments to the issue that is on the agenda, do so. Otherwise, I'm going to ask you to stop.

Paula Johnson

Well, you can, but I think there is disciplinary action that needs to be done because my character was assassinated that night. So with everything that is said here, I think that we, as a community expect more from our elected officials to be forthright and give us all the information that we need pertaining to this information. One other thing I just want to say, under the RSA, under the Right to Know Law, there is no texting, no letters, no note given to anybody because that's electronic devices. If you're doing that in the horseshow that's an open meeting, you have to show it to us. So anybody who texts here now, I expect to be able to see that as part of the meeting minutes. Thank you.

John Hilliard, 847 West Hollis Street, Nashua

I live directly across the street from these properties and I've resided there for 23 years. I've seen the neighborhood change quite a bit over those years. Traffic has increased, a lot of housing developments have been sold, or houses that were on large pieces of property have been sold and more houses built in their place. The whole neighborhood has grown but it still remained a residential neighborhood. I am really on the fence and concerned with some of the developments that have been going on across the street. I've been dealing with it for 4-1/2 years from potential gas station, convenience store to now the purchase of the land by the City. I'm concerned with what potentially the City would end up doing with the property. Right now I look at houses across the street. I'm concerned that if the City was to ever put a large industrial building to house a centralized public works division, I would not be in favor of something of that sort. Nor do I think that's what the intent is here but it hasn't really been stated. I am encouraged with the last wording from last Tuesday's meeting that kind of curtails what would potentially be done with the property and I'm actually happy with that language. As a taxpayer, I'm concerned with, well you see properties like 820, 824 West Hollis Street which also are between the street and the landfill or 852 coming before the Board as a taxpayer and saying we can't sell our properties, we would like the City to buy our properties just like you brought these properties. So, as a

taxpayer I'm concerned with what precedence this takes and will we be seeing the same thing in the future. I'm also concerned with whether or not the entrance of the landfill may be changed as part of this purchase. I'm worried that the entrance will get moved to potentially in front of my property, its already difficult as it is getting out of the property and across the street. Will there be a light there. Just down the road they've changed the road to be three lanes. They've got a central lane for turning, though its already very congested. So these are my concerns and I want you to at least take them under consideration while you're making your decision this evening. Thank you.

Geoff Daly, 48 Waldron Pond Drive, Nashua

First, I would like to start off by reiterating the pitting of this resolution. I still think it needs to be changed and I thought one way to do it would be to remove the Division of Public Works and add a benefit of the Board of Alderman to determine future use by resolution, as the heading rather than Division of Public works. That removes a little bit of a stigma. Now I want to address and I have given a copy of what I'm talking about tonight to Mr. Bergeron, the clerk. We talked the other night about the spending cap. This is for the land which is on West Hollis Street lots 836, 844, 848 as stated as DPW purchase. I just addressed that should not be. I am also referencing Attorney Clarke's September 25th letter funding for R-12-20, her letter of September 18th voting requirements for R-12-20 and also a letter from Aldermen Deane and Donchess referencing the spending cap of R-12-20. What I've heard, there is an account number 700, which hold fund proceeds. How many millions of these dollars are now designated bond debt? In Attorney Clarke's letter Pennichuck reimbursement is a non-lapsing 700 account which I believe also holds approximately \$5.29 million reimbursement of transaction costs and fees. This is actually in PUC settlement and you can go to it and look at it on page six of the Settlement Agreement Docket DW 11-026. Also it states annual payments made by Pennichuck Corporation to reimburse the city for the \$152 million Pennichuck acquisition around \$9 million annually for the next 30 years. Reimbursement of \$5 million in eminent domain costs, \$500,000 annually for 10 years, this is noted on page 16 of the Settlement Agreement. There are no accounts for these Pennichuck reimbursement funds shown in the annual budget for these funds in this 700 Account, which I understand are not subject to the cap. This is why we now see proposals to appropriate this money outside the annual budget including \$500,000 for R-12-20 purchase land on West Hollis Street and \$528,000 for R-12-34 a transfer to the CERF account. This placement of the reimbursed funds bypasses the intent of the spending cap as I read it and reach out to anybody who has a better understanding but that is my understanding. As well as that legal language of the spending cap, Attorney and Alderman Jim Donchess accurately addressed this the other evening and I would like him to further that. The Pennichuck reimbursement should not be comingled with bond proceeds. Hidden in the 700 account of these undesignated funds which can now serve as a slush fund, and I've heard a number of other people say the same thing, slush fund, available to those clever enough to know of their existence and I understand and I have heard several aldermen ask, where is this money, how can we see it because it is not in the annual budget. So really, its understanding how to manipulate financial contortion if you want to put it. The budget process together with the city's archaic accounting system currently being updated will we lose any data. That's very important. The manipulation of the funds in the R-12-20 resolutions are an excellent example of such financial manipulation. The unamended 12-20 resolution mentions the supplemental appropriation requiring 10 votes, but the amendment resolution calls it a transfer which only requires eight votes merely by changing the account where the funds are to be placed. The difference of course is 10 votes, where the resolution would not pass versus the eight votes where the resolution reasonably expected to pass. All Pennichuck reimbursement funds since these are not from my understanding from President McCarthy a source from tax revenues could be immunized from the spending cap. If so, this should be done by prior separate resolutions and these reimbursement funds should then be placed in a separate (revenue account) reported annually within the annual budget so that they are opened to the public for needed comment. I've added data in here which covers the transaction costs for the acquisition which was about \$5.29 million and then the eminent domain costs which were approximately \$5 million. This is all recorded in the PUC docket that I mentioned. Tonight I think you've got to look at, are you going to exceed the spending cap because again, I raised the question the other night, we've got two letters from Attorney Clarke and they differ very slightly in their interpretation and as Alderman Donchess said the other night, there is going to be legal differences sometimes in interpretation, but it is up to this chamber to

ensure that you unanimously agree with the interpretation of the acquisition funds from Pennichuck because, I agree. We don't want to see West Hollis Street like Amherst Street. That I thoroughly agree with, but we've got to have it planned, we've got to have some restrictions. I personally feel if you're going to purchase it you put minimum 125 foot buffer from the street in, 55 foot buffer either side of the property and yes, legally you have by federal law got to put in an emergency access. It could be a gravel road. I understand what Miss Johnson says, yes there is cost involved. Those are things if we are going to stop possible development of commercial land, we've got to put restrictions. I first think you've got to change the wording of the resolution, to the benefit of the Board of Alderman to determine future use by resolution and remove Division of Public Works and add in the other wording that Alderman Moriarty was alluding to last Tuesday. Thank you.

Alderman Deane

Mr. President, at this time, I'd like to move to amend the agenda by adding a period for general public comment immediately following unfinished business resolutions and waive our rule of having to sign up prior to the start of the meeting.

A Viva Voce Roll Call was taken on the motion to amend which resulted as follows:

Yea: Alderman Wilshire, Alderman Dowd, Alderman Melizzi-Golja, Alderman Chasse, Alderman Caron, Alderman Moriarty, Alderman Donchess, Alderman Tabacsko, Alderman Sheehan Alderman Deane, Alderman Vitale, Alderman Craffey, Alderman Cookson, Alderman Pressly, Alderman McCarthy	15
Nay:	0

MOTION CARRIED

UNFINISHED BUSINESS – RESOLUTIONS

R-12-20

Endorsers: Mayor Donnalee Lozeau
Alderman Michael J. Tabacsko
Alderman Kathy Vitale
Alderman Richard A. Dowd
Alderman Mary Ann Melizzi-Golja
Alderman-at-Large Brian S. McCarthy

**APPROPRIATING \$650,000 FOR THE PURCHASE OF LAND FOR THE DIVISION
OF PUBLIC WORKS AT 836, 844, AND 848 WEST HOLLIS STREET (MAP D,
LOTS 84, 85, AND 86) AND AUTHORIZING THE ACQUISITION OF THAT PROPERTY**

Given its fifth reading;

**MOTION BY ALDERMAN TABACSKO TO AMEND R-12-20 IN ITS ENTIRETY BY REPLACING IT WITH
THE AMENDED VERSION PLACED ON OUR DESKS THIS EVENING**

ON THE QUESTION

Alderman Cookson

Point of Order. Should it not be removed from the table prior to that motion?

President McCarthy

We can do that if you want to. The meeting was scheduled to take up that piece of legislation. It's being read as part of the agenda.

Alderman Cookson

It's your decision at this point.

President McCarthy

I think we're fine the way it is actually.

Alderman Chasse

Would Alderman Tabacsko like to read that paragraph for the residents.

Alderman Tabacsko

For the benefit of Alderman Chasse and everyone else who might be interested. The amendment consists of the last paragraph that has been added. It reads as follows: "Furthermore, be it resolved by the Board of Aldermen of the City of Nashua that the city shall not cause said properties to be developed, including the construction of buildings, except in conformance with the city's residential zoning regulations applicable to the neighborhood in which the properties are located." I would make a note that I believe there's a typo and that should be except with an "e" instead of accept.

Alderman Pressly

I gather this is the version that has been created by the legal department in response to what I thought the board was sort of leaning towards the amendment offered by Alderman Moriarty. I found his proposal really pretty good. The concerns I have with this other one is that it references the zoning and that can change. I'm not sure what it is now because a couple of these three properties have had commercial usage. So I don't know today if they are.

President McCarthy

I believe in that regard it is identical to the amendment that Alderman Moriarty had. I've read them both and I don't know that I saw any tremendous difference between the two.

Alderman Moriarty

I'm happy to comment. Aside from it sounding like it was written by an attorney, I like the way it's written.

Alderman Pressly

Then I guess I have a further question. I think for me the major concern is that all the neighbors as I recall the statements, they all want it to look like it's still a residential area. In a way it's all appearances. It has to do with how it looks from the public way. They want to have it look like it's a residential area. It's a natural area. They do not want it to look as if it has commercial usages although we all know, and they do too, what's going on behind these new parcels. We know that they've got a major landfill back there but they want it to appear in order to protect their residential properties. I guess I'd like to have something in there to indicate that our goal is to make it look residential to protect the neighbors' interests. I'm not sure that it says that. I know if there's a question say five years from now or ten years from now, the people that are worried about it can go back and

look at the minutes of what we're saying right now and try to understand what our intention is. But if I'm going to vote for this, but I'm inclined to do, is that to make it very clear that whatever happens in the future, if they should change the zoning for whatever reason, if anything else should take place that our goal by passing this amendment, our goal is to have it appear to be a residential area from the public way. What's going on behind there we cannot control. But I think it has to do with maintaining the residential character of that part of the road. If everyone thinks that amendment is going to do that then I would support that but I'd like to hear other people express that if not to take your stand on it to also have in the public record. Five, ten years from now somebody comes along and says that's not what they meant, they meant that they can do whatever they want to there and use it for the landfill. So I guess I'd like to have other people speak up and be on the record that your expectation is that if we buy this property and no matter if it's at public works or if the city rules over it that our expectation is that that land be preserved in such a way that it appears from the public road to be a residential area and will not impact the neighbors.

Alderman Deane

Other than some severe heartburn over the financing, I think as was stated by Mr. Daly, and I had spoken to some other folks about this, what I would like to see this property be subdivided into one contiguous lot, I guess the phrase would be, correct me if I'm wrong, Attorney Bennett, and never ever added to the landfill property. I say that because what we're being told is that there is the plan for public works garages that are in the making. We've had many folks come up with grave concerns about commercial development there. I think if we have that land just sat there in perpetuity and we do strike the division of public works because then it's a decision to be made by the board of public works. At that point, we're out of the picture. The conversation I had with the president the other night pertaining to appropriations, well if they want to do any work there then they'll need appropriations and they come from us. But the downside to appropriations is they can also be transferred. There's a large book out back that will clearly show you that money is moved around all the time and spent on other purposes. I think what we've heard from the public and what I've heard from a lot of my colleagues that we should under our old lands and buildings committee, which is now infrastructure, have control over the destiny of this piece of property. That's just my believe because when it comes time to belly-up and make the changes there that will have to be made in this room, and the people will see what the discussion was about, what people agreed to, what the public had to say about it and whether we're going to follow through with what we said we were going to do. Even if down the road this binds future boards, they can come in and change legislation but I think we should make it abundantly clear what our intentions are. By removing the division of public works out of the title and the body puts the onerous on us. So, Mr. President, I'd like to further amend by striking in the title and the body the "Division of Public Works" and I'd like to replace that. If I use the "City of Nashua, through you, Mr. President to the legal department, would that fall under the Board of Aldermen or should I just use "Board of Aldermen?"

Attorney Bennett

I don't believe that the Board of Alderman can hold property. Any property is held in the name of the City of Nashua, not in the name of the Board of Aldermen.

Alderman Deane

So the City of Nashua would suffice with the concerns that I raised?

President McCarthy

I would suggest just using "city use"

Alderman Deane

Pardon me?

President McCarthy

Make it read purchase land for city use at 836...

Alderman Deane

By amending that to city use would that fall under the jurisdiction and responsibilities as the Board of Aldermen through the Infrastructure Committee if changes were going to be made? That only changes could be made by this Board for the use once the city owned it?

President McCarthy

I would believe that that accomplishes that purpose, that's it's general land of the city and not land that has been assigned to the Board of Public Works. Corporation Counsel can correct me if I'm wrong.

Attorney Bennett

It would be treated like any other land that is not dedicated to public works or police, fire or school.

Alderman Deane

Land for city use, that would be in the title. Then in the body in the first paragraph, the division of public works would be stricken.

MOTION BY ALDERMAN DEANE TO FURTHER AMEND IN THE TITLE AND IN THE FIRST PARAGRAPH OF THE BODY BY REPLACING THE PHRASE "THE DIVISION OF PUBLIC WORKS" WITH "CITY USE"

ON THE QUESTION

Alderman Moriarty

Maybe I'm a fool, but I'm at least a hopeful fool. The fact that it says it's for the Division of Public Works in both the title and the description seems to imply that it would more rightly be purchase under an account from the Division of Public Works as opposed to capital. So if you keep the statement that's purchase for the division of public works that would seem to imply that you really rightly would need ten votes to pass it as opposed to eight. On the other hand, I'm not going to kid myself into thinking that it's not for the department of public works. It essentially is but all that doesn't really matter in my opinion because I was sort of hoping that we would get a lot more than ten votes to pass this in which case whether it was a supplemental or whether it was the department of public works wouldn't matter. You could just simply say to purchase land, although I technically agree that's probably the best way to do it, at this point all I want is for everybody to get along. So I'm going sort of watch how the people to my left vote a little bit here because I don't want the house of cards to come crumbling down. That's all.

President McCarthy

That account is not specific to public works. That is a land acquisition account.

Alderman Caron

If you take this out, the wording out, "Division of Public Works" does that mean the public works department has to come back to the Board of Aldermen in order to utilize part of that land for the entrance to the landfill? Are we getting into how this is going to be utilized? I'm not talking about doing anything else. I'm talking the original intent was for redoing that entrance and exit. That to me would make a difference on how I vote.

Alderman Tabacsko

I certainly appreciate and understand the amendment to remove that public works reference. However, I'm not certain that I agree with that because I think it's debatable whether or not to have those lot lines removed to make it one parcel. I think that's all talk and discussion for another day. I think that the amendment that we've presented tonight that was originally came from the ideas expressed by Alderman Moriarty, but several other people contributed to it, I think it makes sense. We're protecting the residential zoning. This is something that I've been particularly had concern about. I think the amendment addresses the remaining concerns and I would urge us to not make this further amendment by removing the division of public works and pass this on the amended version that we started with. Thank you.

Alderman Deane

I disagree with the position my colleague takes, and I'll tell you why. I think we should have some control of just a few things that are going on in this community. A number of people have sat here and publicly stated to the people that have come up and spoken, nothing's going to happen. This does nothing more than allow the process of any work being done down there to come back here so the public understands. It also holds people accountable who told these folks that oh no, we're not doing anything down there. We're not going to put any buildings up. We're going to use it as a buffer. That's what these people have been told. So let them come back here. If the board of public works wants to come back here with a plan to put in an entrance, I'd love to see it. I'm not against that. I just want to have a vote on whether we do that to the property, and I want the citizens to be able to come in and hear what the plan is. That's what I want. That's the premise behind why I made the motion.

Alderman Cookson

I would just add a further comment. At the board of public works meeting last week, they discussed another resolution. I won't get into the context of that resolution, but Commissioner Moriarty during his statement with regard to that particular resolution basically stated that he was willing to work, or the board of public works was willing to work, have conversation and communication, so I think there's real opportunity especially with Alderman Deane's motion to further amend that we can absolutely do what Commissioner Moriarty suggested the other day and that is have a meaningful conversation with the Board of Public Works, and I think they would welcome it. Thank you.

A Viva Voce Roll Call was taken on the motion to amend which resulted as follows:

Yea:

Alderman Donchess, Alderman Deane, Alderman Craffey,
Alderman Cookson, Alderman Pressly, Alderman McCarthy 6

Nay: Alderman Wilshire, Alderman Dowd, Alderman Melizzi-Golja,
Alderman Chasse, Alderman Caron, Alderman Moriarty,
Alderman Tabacsko, Alderman Sheehan, Alderman Vitale 9

MOTION FAILEDPresident McCarthy

We're back to the motion to amend with the white copy distributed this evening.

Alderman Donchess

That then raises a question in my mind which I would like to address to Mr. Bennett if that is okay. So what would be the legal status if we were to purchase this parcel with the restriction as drafted? Who would have control over this? Normally as I understand it, city property is under the control of the Board of Aldermen except if something fits under the Charter provisions that says the Board of Public Works has control over sidewalks or streets and construction thereof. This would be a parcel of land which the city owns. If this language passes and there were proposals say to alter it, to put in new driveways, to do whatever, who if this language goes through as drafted would have control over that? Could the Board of Public Works do all that without the authority of the Board of Aldermen or because it's city property, would the Board of Aldermen need to approve it?

Attorney Bennett

The Board of Aldermen, while they have financial control, if there's improvements it will require funding such as the construction of a new public works barn. I have to disagree with Mr. Deane. I doubt very much that there's enough money to shift around in that department's budget to fund a building of that size. I believe it's millions and millions of dollars. They would have to come and get that bonded.

Alderman Deane

I never stated that for a point of clarification.

Attorney Bennett

Then I apologize. I thought you were talking about transfers within the department so they could build things so I apologize.

Alderman Deane

Roadways, things of that nature.

Attorney Bennett

There is financial control here, but if it's part of the public works or associated with the landfill, they have the care and custody of that property. If they were to build any structure on it, any building on it, that would require them to work with the Infrastructure Committee to design any buildings.

Alderman Donchess

I'm following up on the question or the concern that Alderman Deane expressed. Let's say the Board of Public Works says okay, we want to alter the entrances in the following way. They just inform us this is what we're doing. We on the other hand think well, we'd like to have the neighborhood have input. We'd like the review by the legislative body of the city whether this makes sense. What's the answer? Can they just make changes without Aldermanic approval? Of course I'm asking this question in the context of a situation where the Board of Aldermen is told we have no jurisdiction and no say on the Broad Street Parkway, and we have no jurisdiction and no say on the Main Street sidewalks. So is that going to happen again where we're told sorry. Here are the plans. That's it. Would this allow that situation to occur again? That type of situation to occur again?

Attorney Bennett

What allows that situation to occur is the Charter. The Charter lays out responsibilities for the Board of Aldermen as well as for the Board of Public Works. They are given that responsibility under the Charter. You can attempt to amend the Charter to change it, but that is the authority.

Alderman Donchess

I think Mr. Bennett misunderstands my question. I get the Charter reference with respect to the streets and the sidewalks, but it's not clear to me now if we pass this as written which situation are we in? Does the Board of Aldermen have control like it does at city hall or does the Board of Public Works have control and can do whatever they want without the authority of the legislative body on this land if this passes as written?

Attorney Bennett

The Board of Public Works has the authority to maintain and do the work on their property; you would have the funding at the Board of Aldermen, but they are not free to do anything they want. They are subject to site plan approvals through the planning board. There are controls on that. The city is subject to those regulations. It's not unfettered control on the Board of Public Works.

Alderman Deane

If we pass this, we have control of this property. The Board of Aldermen does the way this resolution reads. Just because it abuts the dump or the landfill rather doesn't mean anything. It doesn't mean a thing. The lot lines have to be moved in order to accommodate this as part of that parcel. That's not what this is all about. The Board of Aldermen has control of this. My question would be: In order to move those lot lines, would that have to be done legislatively?

President McCarthy

It has to be done by a subdivision request to the planning board.

Alderman Deane

The mayor could make that request if we approve this, to move the lot line to make this part of the solid waste, the landfill property, the landfill parcel?

President McCarthy

That is a good question and one that I don't know we can get an exact answer to this evening.

Alderman Deane

That's unfortunate. Alderman Tabacsko did bring up a good point the other evening that we should really know what the plan is before we move forward with this. There's a lot of other things that need to be done. I think we should understand what the future in this piece of property brings. We've heard all the hypothetical situations about I guess we're going to take the \$18 million, \$15 million consolidation out of the equation now. We've heard about a roadway and a buffer zone. That's what I'm kind of left with in my mind, nothing else. But if the plan is to merge it with the Four Hills parcel, I think we should know that. I'm looking for a design or a relocation of the entranceway, but if

President McCarthy

The reason I say we may not know the answer, one would perhaps simply think that if two parcels that are adjacent have been assigned to the Board of Public Works that the Board of Public Works would decide to merge them. I don't know whether in the statutes that give us authority over ownership of land it's that clear that manipulation of the parcels can be done without the consent of the legislative body or the governing body, one or the other which are both us in this particular case.

Alderman Deane

Mr. President, you just raise a very good point. Don't you think we should know that?

President McCarthy

I don't believe it's necessary to what's at hand.

Alderman Deane

Well it controls the final destiny of what could happen.

President McCarthy

I don't want to speak to the issue from the Chair. I will provide information, but if you'll allow me the leeway, I believe there are adequate controls that this Board can use to control the destiny of that piece of property. Nothing is going to happen with it at the moment, and I believe we can introduce additional legislation either in the form of legislation about putting additional stipulations on that particular parcel or by changes to the zoning regulations as they apply to city facilities that would at least put constraints on what, for example, a landfill entrance might have to look like if it were built there.

Alderman Deane

That's all fine and well but if the plan marches forward and there's an application put into the planning or the zoning board, what good is legislation going to do at that point?

President McCarthy

The other alternative, of course, is that this Board can express an opinion to the planning board on a city proposal that is before it. And I would actually expect that were the Board of Aldermen to weigh in in opposition to a plan submitted by the city, the planning board would take that quite seriously.

Alderman Deane

I hate to admit it, but I feel as though I'm fighting a losing battle again. I don't understand this, but I guess I'm not supposed to understand it. Thank you, Mr. President.

Alderman Donchess

I'm still trying to understand what the situation is. I believe Mr. Bennett suggested that if this is purchased for the Public Works Division that the Board of Aldermen has no control. As I said, I know that if the Board of Aldermen has control and if there's a proposal to change things, we will under your normal custom accept public input and we'll figure out what people think. I don't know if that will happen with the Board of Public Works. I hear from Attorney Bennett that we lose control but on the other hand Alderman Deane says because this is a separate parcel that still the Board of Aldermen would determine its faith. So I'm not hearing a clear

answer. Maybe I'm just misunderstanding what some people are saying. But in any event, what is your interpretation of that situation?

President McCarthy

I just said I'm not sure because I don't understand how all of the various statutes fit together with regard to control of real estate owned by the municipality. I will ask Attorney Bennett to research that. While it's germane, it certainly is not going to impact my opinion on whether or not we should acquire the parcels because I think we can control that.

Alderman Tabacsko

I just want to remind everyone that the reason we're here tonight is there is a clock ticking that we need to be cognizant of. I know that that is not necessarily what anybody wants to hear because nobody likes that sort of pressure, including myself. However, I agree that the purchase makes sense. It has for a long time, and I think that if we miss this opportunity, it will be a very difficult if not impossible thing to adjust or correct. So I urge us to please pass this in the form that was amended earlier this evening.

Alderman Vitale

I think one of the main concerns that I hear is that either through us as representatives to our constituents or the constituents, themselves, the public, themselves, being able to have an opportunity to have some input if there was anything major. I know the buffer part and keeping it within the zoning regulations that are applicable to this neighborhood right now, but I think what everybody wants to hear is that there are opportunities for public input, either directly from the residents or through us for what the future is. If there some steps along the way that we could point out. One I know is if anything comes before the planning board, anybody in the city is able to step up, including ourselves, to speak to those issues. If it goes to zoning, we have that opportunity also. Is there other areas or is there another piece of property in the city that we can show an example of where it is owned by the Board of Public Works or under their jurisdiction where we can say this is an opportunity where the public had to step forward and voice their concerns or their ideas or whatever. I know for the Broad Street Parkway there was the competition and people were able to weigh in on different things that they liked. What I hear both from constituents and in some of the fellow aldermen is that we have an opportunity to weigh in on future use. What I hear you say is you believe that we do have that opportunity and that it is there.

Alderman Pressly

I agree with Alderman Vitale that our role is to make sure that the public is involved. I think this Board of all the boards in the city does the best job with that. We introduce it. We publish it. We pause. We go back and forth. And that's what really government is supposed to be doing. If it comes up that it goes to one of the land use boards there is notification. But I don't believe there's much notification if it's just something that's done at the Public Works Department because I've been attending quite a few of their meetings. I think I've attended as many as four in the last few months. There has not been a single person from the public that has ever showed up. It's at 2 o'clock in the afternoon. It used to be at 4:30 p.m. My impression unless it's something that goes before a land use board, there's not going to be a chance for public input. And I think particularly with this issue and this group of parcels, we know now first hand that a lot of people are very interested in knowing what's going on. I think we have a dilemma right now because you just decided you want the Board of Public Works to do this exclusively and they don't do much in the way of public participation. I can't think of a time when the public has come to that meeting. Not when I've been there. I'm the only public person that speaks up at those meetings.

Alderman Cookson

I believe it's unfortunate that we're pressed against a deadline of Sunday, September 30, but unfortunately that's not going to weigh my opinion at all. I believe that based on the public input from last Wednesday evening at Main Dunstable Elementary School, the informational meeting that was had, and since then this past Tuesday, additional questions have been asked. Additional questions have come up this evening. I think there are too many questions to move forward with this as it is. I have a question through you to Attorney Bennett, and it's at the end of the first paragraph. This is again to Alderman Deane and Alderman Donchess' point. I'm not sure. I don't understand how this plays out. The language says to purchase land for the division of public works on West Hollis Street. If we approve this resolution, we are purchasing the land for the division of public works. So does the division of public works own the land or does the board of public works own the responsibility for the land? Is there a distinction between those two scenarios?

President McCarthy

I don't believe there is.

Alderman Cookson

Can I have that through you to Attorney Bennett.

Attorney Bennett

Ownership is in the city. The controlling supervision would be with the Board.

Alderman Cookson

So even though the language says to purchase land for the division of public works, the board of public works would be responsible for that?

Attorney Bennett

I think I said that before when I addressed Alderman Donchess.

Alderman Cookson

Thank you. I just have one additional comment that I wanted to share this evening and it's with regard to the purchase price of \$650,000 which is said to be under the assessed value. I was only made aware of this this morning at 11:00 a.m. and I apologize that I wasn't able to share it with the group. The property at 836 West Hollis Street has been under assessed. Actually let me state it this way: According to our assessor we had incorrect information on the land at 836 West Hollis Street. Our records indicated that we had it at 30,000 square feet wherein reality the actual was 69,517 square feet. That adjustment was made in the assessed value between the years 2009 and 2010. However long the property at 836 West Hollis Street has had 69,517 square feet, and I can only assume that it's from when the property was owned. The records in the assessing department only go back to 1994. I can only assume that it's years prior to that as well that this square footage would be accurate. The property has paid less taxes on their property, almost 39,000 square. They've had a reduced tax bill for I don't know how many years. I can only assume by what's on the assessment records, again going back to 1994, it's been at least 15 years that they have paid taxes on an assessed value that was less than the actual. I don't know if that impacts your decision or not. I think I've heard prior to and in other meetings that was want to make these property owners feel whole. We want to compensate them for their current situation, abutting a landfill. I'd say at least 15 years of paying an under assessed tax bill compensates them plenty already, and I will not be supporting the amendment. I just can't support it, not for \$650,000 no matter how good of a deal somebody says it is. It's not.

Alderman Moriarty

I believe the Board of Public Works are elected officials as are school board, fire commissioners, and I personally have no problem going along with the way the Charter defines our city government and letting the school board send their \$105 million in the fashion that they see fit and letting the fire commissioners spend their whatever, \$20 million however they see fit, and in this particular case, maybe it would be kind of cool to have more control over it, but whether it goes to the Board of Public Works, they are elected officials. If I don't like what they do then I will just have to vote them out of office next time. That's my choice. I know for sure I'm going to ask them if they like brick or cement next election cycle. If they like cement over brick, you're not getting my vote. But anyway, I am pleased that at least the purpose, the whole essence of what can we do as a Board of Aldermen making a significant statement about really we agree on what's the point of this property is fairly well summarized in the last paragraph. I honestly think that's a strong enough statement to proceed.

A Viva Voce Roll Call was taken on the motion for final passage as amended, which resulted as follows:

Yea: Alderman Wilshire, Alderman Dowd, Alderman Melizzi-Golja, Alderman Chasse, Alderman Caron, Alderman Moriarty, Alderman Donchess, Alderman Tabacsko, Alderman Sheehan Alderman Deane, Alderman Vitale, Alderman Craffey, Alderman Pressly, Alderman McCarthy	14
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Nay: Alderman Cookson	1
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MOTION CARRIED**MOTION BY ALDERMAN TABACSKO FOR FINAL PASSAGE OF R-12-20 AS AMENDED**ON THE QUESTIONAlderman Cookson

I sent a question off to legal as well as the administration, I believe it was the end of last week, with regard to underground storage tanks. Again former Alderman Johnson had mentioned that the environmental study was only done on 836 and not the other properties. Are there underground storage tanks at the other properties?

Attorney Bennett

In fact the question that you asked legal was whether you had sited the DES report, you referred to that property, you asked if the tanks there had been removed. They were.

Alderman Cookson

Thank you. Any additional comment? I didn't mean to cut you off.

Attorney Bennett

I don't.

Alderman Pressly

That triggers a thought of mine. When the Purchase & Sales Agreement was signed, did we get full disclosure which is customary in real estate from each property because the owners of these properties are expected disclose all sorts of things like underground storage tanks.

President McCarthy

The mayor indicates that we in fact did.

Alderman Pressly

And the assumption is there are no underground tanks?

President McCarthy

That is correct.

Alderman Donchess

This glitch over the control of the property has come up. I'm still thinking about the glitch because I don't think the Board of Aldermen should give up control. I support the amendment and I voted for it. I think the amendment considerably improves the proposal that was made. I'm going to call it the "Moriarty Amendment" kind of like the "Missouri Compromise" or something. He'll probably go down in the annals of city history as having offered this restriction. The Moriarty restriction considerably improves the legislation in my opinion for the following reasons: I've had reservations about spending this money from the beginning because I think the city has higher priorities than this such as in our schools and at our police department where we don't have enough money to do some of the things that I think are necessary. On the other hand, there are enough votes to pass this with or without the restriction. In my mind the construction of a public works garage on this site would not only cost a lot of money that we should not spend but also would be I think a terrible development for the neighborhood because it would open and would result in a commercial strip being built along West Hollis Street for the reasons I mentioned the other night that the city, itself, would be introducing an industrial/commercial major facility and couldn't stop future development in my view. But what the Moriarty restriction does I think accomplishes two things: 1) it makes it very unlikely or impossible that the city would ultimately build a public works garage there which I think is an improvement in my mind and will save the city 15 or 20 million which it doesn't need to spend. Beyond that I think that this is the best possible result for the neighborhood. As I said the other night, the best result is the city buys this and puts a restriction on it as the Moriarty Restriction suggests. The second best result for the neighborhood is that it remains as it is. I think the worse alternative for the neighborhood is that the city buys this parcel and then builds a public works garage there. With the Moriarty amendment that has been passed already, despite my reservations about the priorities that are expressed by spending \$650,000 I think the objective of basically blocking a public works facility because of the restriction and the objective of preventing further commercial development on this strip in my mind is worth expending the funds that have been proposed.

Alderman Pressly

I certainly agree that the Moriarty Amendment is a huge improvement, and I think it does protect the concerns of the neighbors as best we can at this point. I'm struggling. I know it's going to pass. I know it has the votes so I know this will become law and I'm having a personal struggle if I can vote for this. I must tell you that the fact it's coming from Pennichuck money. I know they all say it's not Pennichuck money but this money is there because we purchased Pennichuck. If we had all known that there was suddenly a \$500,000 that we could spend in any way we want to I think we would come up with 15 different ideas as to what our top priority was. I think mine would have something to do with doing something exciting for the city that created jobs. For my

own personal conscience, I just cannot vote for this because of the money source. Although I certainly supported the amendment, I will not be supporting the final passage.

President McCarthy

I would remind you that had we not purchased Pennichuck this money would still have been in that account where it started out when it was appropriated. We loaned it through the purchase of Pennichuck and it came back.

Alderman Pressly

You've reminded me numerous times.

Alderman Cookson

I'll just make one comment that if our assessing department hadn't discovered their error in 2010, just two years ago, we'd be paying a lower assessed value on the properties.

A Viva Voce Roll Call was taken on the motion for final passage as amended, which resulted as follows:

Yea: Alderman Wilshire, Alderman Dowd, Alderman Melizzi-Golja, Alderman Chasse, Alderman Caron, Alderman Moriarty, Alderman Donchess, Alderman Tabacsko, Alderman Sheehan Alderman Vitale, Alderman Craffey, Alderman McCarthy	12
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Nay: Alderman Deane, Alderman Cookson, Alderman Pressly	3
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MOTION CARRIED

Resolution R-12-20 declared duly adopted as amended.

PERIOD FOR GENERAL PUBLIC COMMENT

Paula Johnson, 15 Westborn Drive, Nashua

I would like to say thank you Aldermen Pressly, Cookson and Deane for standing your ground on this. I hope that when we do any work on there the price tag isn't pretty high on this property because I'm not going to be very happy. I want to finish addressing the Board with that little incident out in the parking lot. I expect a public apology from the alderman by letter or in this chamber, because that was a lot worse than oh shut up in the parking lot and nobody should ever be spoken to like that as a constituent in the city because the aldermen are elected by the people. There is no such thing, if you're asking for decorum in this horseshoe it has to apply and go to the public also. I would never, ever have ever spoken to a constituent like that the way I was spoken to in the parking lot. Even though there was a constituent one time that got mad at me and almost pushed me through the glass door in the back I still held my composure and I was practically in tears when she almost did that to me. So I hope, maybe the jar should start here and that alderman should be the first one to put the 10 bucks in. I expect an apology from her. There is no excuse for what happened in that parking lot. Thank you.

Stacie Laughton, 243 Main Street, Apt. 33, Nashua

I would just like to say to everybody in this room and elected officials here. I want to thank you for your service and prior to the meeting I spoke to Alderman Tabacsko and I got a chance to speak to Alderman Dowd. I think what was emailed to me what was supposedly an insult; I don't think anybody in this chamber would ever purposely make such a statement to tell anybody to shut up. As I said earlier, I don't feel disrespected ever

when I come to these chambers. I feel they are place where they are welcoming for public comment, I feel as though that times when I've shared my opinion they have been heard, there have been any number of times when I've made a suggestion and an alderman in this room thought it was a good idea. So, in regards to the shut up statement, I don't believe anybody was directing that towards me. I did speak to the President of the Board and it was suggested that it was most likely background interference and that is what I believe it is. Some people might think I should pursue it, I don't. I have too many other things that I need to do at this time and for what I do in the city. So, with that, I don't think any statement was directed negatively towards me and I wish for any comments or anything further to just end in regards to that. But I do want to thank each and every elected official in this room and although we may differ on our opinions from time-to-time, we all still have to get along and that's what I have to say about that. Thank you.

Geoff Daly, 48 Waldron Pond Drive, Nashua

I'm very sorry and very sad that Alderman Deane's change to the top of the resolution was not passed. I think Alderman Donchess and Attorney Bennett had a very good exchange, but I believe I've lived in this city since 1992. I've seen a number of changes and there are some powerful people in and around who can have a lot of influence and I just hope that because you didn't adopt the change that Alderman Deane asked for, you have not and will not lose control of the final use of that land. I still feel that there should be a minimum of 125 foot buffer in the front, 55 foot by the side and under the federal law some form of emergency access in the future but I believe this chamber should be the people who control that. The Department of Public Works, from what I heard tonight can do and have done what they wanted and as Alderman Pressly said, I've been to one Public Works meeting. Its at 2:00 p.m. I took time off from work to go to it. How many people can do that. I would say very few unless you're fully retired. That is why there is nobody there. That is why we don't hear about what is going on. Sometimes some of the minutes are not really like we have it in this chamber, fully verbatim and I think that is also wrong. I'm very saddened that you did not accept Alderman Deane's alternative. I like the use that Attorney Bennett came up, City use. That's good. Maybe its better than what I was presenting. But I believe ultimately there is a possibility you may regret it and lose and have lost control of the future development of that land. I just hope that it doesn't happen, because the gentleman back here whose house is right opposite it, if I was him I'd sell it to the Tedeschi Company and say, go ahead and put your gas station in there. And you're going to end up with an Amherst Street quicker than you think of. Because don't forget, on the other side of the entrance is the motorcycle shop which abuts Trestle Brook and you've got on the other side two more properties which were announced tonight. Time marches on. As the Mayor pointed out the other night there is Supreme Court and Superior Court judgments where they have handed the developer, you go ahead and develop it and the City couldn't do anything. We've already got a couple of homes on there that have got variances, probably grandfathered, I'm not sure, but you've got businesses so there is a precedence already in the neighborhood, so I just hope you've made the right decision by not accepting Alderman Deane's change to the leading head of the resolution and removing the word Department of Public Works within the Resolution because you're all going to regret it who originally accepted the wording the way it was several weeks ago when I said let's change it. Nobody moved on it. There are a number of people in this chamber who never, ever say anything and Alderman Pressly asked you all tonight, have a say. There have only been a couple of people out of the whole chamber who have. I just hope and pray that you don't regret it down the road in not accepting Alderman Dean's wording and also the discourse that Alderman Donchess had with Attorney Bennett. It was good, both of them and I understand between the two of them and also what Alderman Donchess said the other night. There can be interpretation of words. Lets hope this interpretation doesn't get out of hand and you do lose control. Thank you.

Mike Soucy, 3 Roseanne Circle, Nashua

I just want to say that I can live with the Moriarty amendment. I think it's the better of the two and the only thing that I wanted initially was a plan. I live near the dump too, I like the thought of a buffer, so thank you Alderman Moriarty. I just want to put it for the record that I am in agreement that I think the language would have been better with Alderman Deane's alternative. Thank you.

Alderman Chasse

Before motion I would like to make a comment. I know people don't like change and if and when they do make the changes to entrance or exits from the landfill, as the head of the Board of Public Works, I hope that you take consideration and bring the residents in for their input because whatever you do, you might have 75% that thinks its good and the other 25%, you're not going to satisfy everybody, but I'd like to see them have some input in that.

Alderman Deane

If that's done, Alderman Chasse, I would ask that its not done at 2 o'clock in the afternoon.

Alderman Chasse

Good point.

Mayor Lozeau

I would point out Alderman Chasse that there are many abutters that are not here and that have not been participating because when I started this I spoke with them and had conversations, and then I told them that as we move forward I would like their input on the things that we would like to do there. You know that we have done that, not within the Board of Public Works meeting at 2 o'clock even though we do have an opportunity for that but we go out in the neighborhood and we hold meetings when we are doing work in those areas. I would imagine it would be much the same, so you can have some confidence that will take place.

ADJOURNMENT

MOTION BY ALDERMAN CHASSE TO ADJOURN

A Viva Voce Roll Call was taken, which resulted as follows:

Yea:	Alderman Wilshire, Alderman Dowd, Alderman Melizzi-Golja, Alderman Chasse, Alderman Caron, Alderman Moriarty, Alderman Donchess, Alderman Tabacsko, Alderman Sheehan Alderman Deane, Alderman Vitale, Alderman Craffey, Alderman Cookson, Alderman Pressly, Alderman McCarthy	15
Nay:		0

MOTION CARRIED

The meeting was declared adjourned at 9:00 p.m.

Attest: Paul R. Bergeron, City Clerk

Special BOA Sept 27th 2012 statement by Geoff Daly, 48 Walden Pond Dr. Nashua

Subject **The Spending Cap v. R12-20--Land Purchase on West Hollis Street Lots 836,844 and 848 slated as DPW land purchase legislation!**

References: Atty. Clarke's 25th September letter, "Funding for R-12-20."
Atty. Clarke's 18th September Letter, "Voting Requirement for R-12-20."
Ald. Deane and Donchess 23rd September letter, the Spending Cap v. R-12-20

There is an account # 700 which holds bond proceeds, how many millions of these dollars are no doubt designated bonded debt?

Atty. Clarke's 25 September letter, the Pennichuck Reimbursement is in a "non-lapsing" 700 account", which I believe also holds:

1. The approximate \$5.29 million reimbursement for transaction costs and fees (see page 6 of the Settlement Agreement Docket Dw 11-026).
2. The annual payments made by Pennichuck Corporation to reimburse the city for the \$152 million Pennichuck acquisition (around \$9 million annually, for the next 30 years),
3. The reimbursement for \$5 million in Eminent Domain costs, \$500,000 annually for 10 years (see page 16 of the Settlement Agreement)

There is no accounting for these Pennichuck Reimbursement funds shown in the Annual Budget, for these funds in this 700 account (which I understand are not subject to the cap?). This is why we now see proposals to appropriate this money outside the annual budget, including \$500,000 for R-12-20 (purchase land on West Hollis Street) and \$528,000 for R-12-34 (a transfer to the CERF account).

This placement of the reimbursed funds bypasses the intent of the Spending Cap, as well as the legal language of the Spending Cap. Attorney and Alderman Jim Donchess accurately addressed this issue the other evening.

The Pennichuck reimbursement funds should not be co-mingled with bond proceeds. Hidden in a 700 account of these undesignated funds which can now serve as a "slush fund," available to those clever enough to know of their existence, and who understand how to manipulate ("financially contort") the budget process and the city's arcane accounting system currently being updated (will we lose any data?).

The manipulation of funds in the R-12-20 resolution are an excellent example of such financial manipulation. The unamended R-12-20 resolution mentions the "supplemental appropriation," requiring 10 votes but the amended resolution calls it a "transfer" which only requires 8 votes, merely by changing the account where the funds are to be placed. The difference, of course is

the 10 votes where the resolution would not pass v. the 8 votes where the resolution reasonably expected to pass.

All Pennichuck reimbursement funds (since these are not, from my understanding from President McCarthy; sourced from tax revenues, could be immunized from the Spending Cap), if so this should be done by prior separate resolution, and these reimbursement funds should then be placed in a separate [Special] Revenue Account, reported annually within the Annual Budget, so they are open to the public for any needed comment.

Covering Data:

Docket Dw-11-026 settlement final [Pages 6 and 16] are relevant and preamble below

Page 9 of the docket:

(3)

Transaction costs and fees:

\$5,286,875

These estimated costs include costs incurred by both the City And Pennichuck in connection with the Merger, including legal and accounting fees, investment banking fees, fees and costs relating to customary due diligence conducted by the City during negotiation of the Merger Agreement. For avoidance of doubt, the transaction costs and fees described in this category of the Acquisition Costs do not include PWW or Pennichuck's eminent domain costs as defined in DW 10-091.

Page 13 of the docket:

With respect to dividends, Mr. Ware testified that Nashua will be able to pay its eminent domain costs out of dividends when the utilities, have good years; in bad or marginal years, dividends would not be taken out. 10/25/11 a.m. Tr. at 60 lines 1-8. Pursuant to the settlement agreement, Nashua would not be able to take out more than \$500,000 per fiscal year and eminent domain costs are capped at \$5 million over time. Thus, if there are no profits, there are no payments toward eminent domain costs.

Page 21 of the docket:

Mr. Teeboom

Alleged that; land continues to be sold off and that a 33-acre parcel is slated to be sold to Southwood, which he found inappropriate.

Mr. Teeboom stated he was pleased that the bond debt would be paid off in thirty years and that rates would be lower thereafter.

Page 29 of the docket:

As to dividends. Nashua agrees to limit its receipt of dividend payments following the acquisition other than for payments under the CBFRR, to reimbursement of its costs to prosecute the eminent domain

case, estimated at \$5 million. The Settling Parties agreed to a \$500,000 annual cap on these dividends related to this reimbursement.

Page 32 and part 33 of the docket:

The Settling Parties agree and recommend that the Commission require PWW, PEU, and PAC to not pay or distribute funds in any fiscal year with respect to their common stock, through dividends or other distributions to Pennichuck Corporation, in excess of an amount equal to the sum of:

- (a) the amount of the utility's then applicable CBFRR, and
- (b) an amount from current earnings and profits with respect to such fiscal year to provide funds to allow Nashua to reimburse itself for costs incurred by Nashua relating to its efforts to pursue the eminent domain proceeding from January 1, 2002 until August 2009 (the Eminent Domain Amount), provided, however, that the distribution in respect of such Eminent Domain Amount with respect to any fiscal year shall not exceed \$500,000, and, provided further, that the aggregate of all distributions in respect of such Eminent Domain Amount shall not exceed \$5,000,000.

For purposes of this provision, the Settling Parties agree that the Eminent Domain Amount shall only include costs incurred by Nashua and shall not include any eminent domain expenses and costs incurred by the District or PWW that PWW sought to recover in its last rate case, Docket No. DW 10-091.

The Settling Parties agree that such eminent domain expenses and costs shall not be recovered from PWW, PEU, or PAC customers. The Settling Parties further agree that the final Eminent Domain Amount shall be subject to audit by the Commission in the first rate cases filed by the utilities and that all parties shall have the right to audit and review evidence provided by the utilities that document the nature and amount of all costs comprising the Eminent Domain Amount.